

**BEFORE THE MINNESOTA
BOARD OF MARRIAGE AND FAMILY THERAPY**

In the Matter of
Tonya Gilmore, Applicant
Date of Birth: 1/15/1969

**FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER**

The above-entitled matter came on for a prehearing conference on January 3, 2012, before Administrative Law Judge ("ALJ") Barbara L. Neilson at the request of the Minnesota Board of Marriage and Family Therapy ("Board") Complaint Panel ("Panel"). The matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing ("Notice of Hearing") issued by the Panel on December 5, 2011. Benjamin R. Garbe, Assistant Attorney General, appeared on behalf of the Panel. Lee R. Johnson, Johnson & Greenberg, PLLP, appeared on behalf of Tonya Gilmore, Applicant ("Respondent").

On February 8, 2012, the ALJ issued Findings of Fact, Conclusions, and Recommendation ("ALJ's report"), recommending the Board take disciplinary action in this matter. (A true and accurate copy of the ALJ's report is attached hereto and incorporated herein as Exhibit A.)

The Board convened to consider the matter on May 18, 2012, in Conference Room C, University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Benjamin R. Garbe, Assistant Attorney General, appeared and presented oral argument on behalf of the Panel. Respondent appeared in person and was represented by Lee R. Johnson, Esq. Board members Mark Flaten and Dennis Morrow did not participate in deliberations and did not vote in the matter. Jennifer Mohlenhoff, Executive Director, did not participate in the deliberations. Karen B. Andrews, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

1. The Board has reviewed the record of this proceeding and hereby accepts the February 8, 2012, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein. Paragraph 6 of the ALJ's Findings of Fact states:

Based on the stipulation entered into between the Complaint Panel and the Applicant, the allegations contained in the Notice of Hearing are not contested. Those allegations are hereby incorporated into these Findings of Fact, with the understanding that the Applicant reserves her right to present evidence and argument to the full Board regarding what, if any, discipline should be imposed against her.

The allegations contained in the Notice of Hearing are as follows:

2. In July 2007, Respondent began employment as a mental health practitioner at a counseling center in St. Paul, Minnesota. As part of her employment, Respondent provided services as a counselor through the Adult Rehabilitative Mental Health Services ("ARMHS") program.
3. The primary purpose of the ARMHS program is to enable clients to develop and enhance psychiatric stability, social competencies, personal and emotional adjustment, and independent living and community skills, when these abilities are impaired by the symptoms of mental illness.
4. Client #1 sought mental health services through the ARMHS program for chemical dependency, depression, post traumatic stress, and relationship/intimacy issues.
5. From May 15, 2007, until April 4, 2008, Respondent provided professional mental health services to client #1, serving as his ARMHS counselor.
6. During the professional relationship, Respondent and client #1 engaged in a personal and sexual relationship.

7. During the professional relationship, Respondent and client #1 visited each other's residences, including overnight visits.

8. During the professional relationship, Respondent and client #1 exchanged gifts, including but not limited to china, crystal, sterling silver, jewelry, and clothing. Client #1 also gave gifts to Respondent's children. Respondent gave client #1 clothing and jewelry.

9. During the professional relationship, Respondent and client #1 spent holidays together and went on social outings together.

10. During the professional relationship, Respondent and client #1 traveled together to a water park near Wisconsin Dells, Wisconsin, accompanied by Respondent's children.

11. During the professional relationship, Respondent and client #1 took sexually suggestive photographs of one another in various stages of undress.

CONCLUSIONS

1. The Board accepts the February 8, 2012, ALJ's report and accordingly adopts and incorporates the Conclusions therein, including the ALJ's conclusion that the "imposition of appropriate disciplinary action against the Applicant is in the public interest."

2. The Board concludes that Respondent's conduct constitutes a basis for disciplinary action as follows:

a. Violation of a statute or rule of the Board, pursuant to Minn. Stat. § 148B.175, subd. 6.

b. Unprofessional and unethical conduct, in violation of Minn. R. 5300.0350, subp. 3.

c. Exploitation of the trust and dependency of a client, and engaging in an inappropriate dual relationship with a client, in violation of Minn. R. 5300.0350, subp. 5.B.

- d. Engaging in sexual contact or other physical intimacies with a client, in violation of Minn. R. 5300.0350, subp. 5.E.
- e. Exploitation of the professional relationship with a client for the therapist's emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 5300.0350, subp. 5.G.
- f. Failure to terminate the professional relationship when the therapist's objectivity or effectiveness is impaired, pursuant to Minn. R. 5300.0350, subp. 5.I.
- g. Failure to furnish evidence that an applicant is of good moral character, in violation of Minn. Stat. § 148B.33, subd. 1(2).
- h. The applicant is incompetent to practice marriage and family therapy, or has engaged in the practice of marriage and family therapy in a manner harmful or dangerous to a client or to the public, in violation of Minn. Stat. § 148B.37, subd. 1(1).
- i. Violation of one or more statutes or rules of the Board, in violation of Minn. Stat. § 148B.37, subd. 1(3).

ORDER

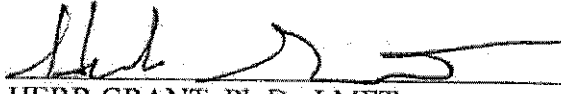
Based on the foregoing Findings of Fact and Conclusions and upon the recommendation of the ALJ, the Board issues the following Order:

1. Pursuant to Minnesota Statutes section 148B.37, the Board may refuse to grant a license to an individual who the Board determines has violated a provision of sections 148B.29 to 148B.39 or one or more of the rules of the Board, including that an individual has practiced in a manner harmful or dangerous to a client or to the public.
2. Respondent's application for licensure as a Licensed Marriage and Family Therapist in the State of Minnesota is **DENIED**.

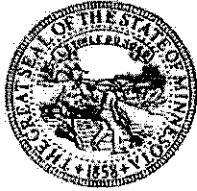
3. Respondent may not re-apply for licensure within five years from the date this Order is executed.

Dated: 6-15-12

STATE OF MINNESOTA
BOARD OF MARRIAGE AND
FAMILY THERAPY


HERB GRANT, Ph.D., LMFT
Board Chair

AG: #3016395-v1



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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February 8, 2012

Jennifer Mohlenhoff, Executive Director
Board of Marriage and Family Therapy
2829 University Avenue SE, Suite 330
Minneapolis, MN 55414

In re: *In the Matter of Tonya Gilmore, Applicant, Date of Birth 1-15-1969*
OAH 11-0916-22435-2

Dear Ms. Mohlenhoff:

Enclosed herewith and served upon you by mail or courier service is the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendation in the above-entitled matter. Also enclosed is the official record. The official record fits into one large envelope. Our file in this matter is now being closed.

Sincerely,

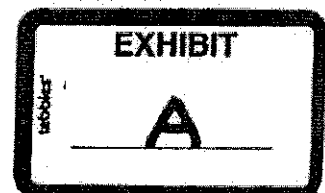
BARBARA L. NEILSON
Administrative Law Judge

Telephone: (651) 361-7845

BLN:njh

Enclosure

cc: Benjamin R. Garbe
Lee R. Johnson



STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF MARRIAGE AND FAMILY THERAPY

In the Matter of Tonya Gilmore, Applicant
Date of Birth: 1/15/1969

FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION

The above-entitled matter came on for a telephone prehearing conference before Administrative Law Judge Barbara L. Neilson commencing at 1:30 p.m. on January 3, 2012. Benjamin R. Garbe, Assistant Attorney General, appeared on behalf of the Complaint Panel of the Minnesota Board of Marriage and Family Therapy (Board). Lee R. Johnson, Attorney at Law, Johnson & Greenberg, PLLP, appeared on behalf of the Applicant, Tonya Gilmore. The OAH record closed on February 2, 2012, upon receipt of a letter of clarification from counsel for the Board.

By letter dated January 11, 2012, the parties informed the Administrative Law Judge that the Applicant had decided not to contest the allegations contained in the Notice and Order for Prehearing Conference and Hearing but reserved her right to present evidence and argument before the full Board regarding the appropriate remedy in this matter. The terms of the agreement reached between the Applicant and the Complaint Panel are reflected in the Findings of Fact set forth below.

STATEMENT OF THE ISSUE

The issues presented in this case are whether the Applicant violated a statute or rule of the Board, contrary to the requirements of Minn. Stat. §§ 148B.37, subd. 1(3), and 148B.175, subd. 6; failed to furnish evidence that she is of good moral character, in violation of Minn. Stat. § 148B.33, subd. 1(2); is incompetent to practice marriage and family therapy, in violation of Minn. Stat. § 148B.37, subd. 1(1); engaged in unprofessional and unethical conduct, in violation of Minn. R. 5300.0350, subp. 3; exploited the trust and dependency of a client and engaged in an inappropriate dual relationship with a client, in violation of Minn. R. 5300.0350, subp. 5.B.; engaged in sexual contact or other physical intimacies with a client, in violation of Minn. R. 5300.0350, subp. 5.E.; exploited the professional relationship with a client for her emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 5300.0350, subp. 5.G.; or failed to terminate a professional relationship when her objectivity or effectiveness was impaired, in violation of Minn. R. 5300.0350, subp. 5.J. If so, the further issue presented is what, if any, disciplinary action should be taken by the Minnesota Board of Marriage and Family Therapy.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Applicant, Tonya Gilmore, has never been licensed by the Board but has applied for licensure.¹
2. The Notice and Order for Prehearing Conference and Hearing (Notice of Hearing) in this matter was issued on November 28, 2011. The Notice of Hearing scheduled a prehearing conference for January 3, 2012, at 1:30 p.m. During the prehearing conference, counsel for the Applicant indicated that the Applicant was considering waiving the hearing before the Administrative Law Judge and reserving the right to present argument to the full Board.
3. By letter dated January 11, 2012, the parties notified the Administrative Law Judge that, after being duly advised of her rights to a contested case proceeding, the Applicant had decided not to contest the allegations contained within the Notice of Hearing. The Applicant does intend to exercise her right to present evidence and argument before the full Board regarding the appropriate remedy in this matter.²
4. In the January 11, 2012, letter, the parties jointly requested that the Administrative Law Judge issue Findings of Fact, Conclusions and Recommendations consistent with the allegations contained in the Notice of Hearing. The Applicant understands that the allegations contained in the Notice of Hearing will become the foundational factual findings on which the matter will proceed to be heard before the full Board.³
5. This matter did not proceed by default, but rather by stipulation of the parties.⁴
6. Based on the stipulation entered into between the Complaint Panel and the Applicant, the allegations contained in the Notice of Hearing are not contested. Those allegations are hereby incorporated into these Findings of Fact, with the understanding that the Applicant reserves her right to present evidence and argument to the full Board regarding what, if any, discipline should be imposed against her.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Board have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 148B.175.

¹ Feb. 1, 2012, Letter to Administrative Law Judge from Counsel for the Complaint Panel.

² Jan. 11, 2012, Letter to Administrative Law Judge from Counsel for the Complaint Panel.

³ *Id.*

⁴ *Id.*

2. The Notice of Hearing was proper, the Board has complied with all relevant procedural legal requirements, and this matter is properly before the Board and the Administrative Law Judge.

3. The Applicant has entered into a stipulation with the Complaint Panel under which she does not contest the allegations set forth in the Notice of Hearing. Accordingly, the allegations contained in the Notice of Hearing are taken as true.

4. Based upon the facts set forth in the Notice of Hearing, the Applicant violated statutes and rules of the Board, contrary to the requirements of Minn. Stat. §§ 148B.37, subd. 1(3), and 148B.175, subd. 6.

5. Based upon the facts set forth in the Notice of Hearing, the Applicant failed to furnish evidence that she is of good moral character, in violation of Minn. Stat. § 148B.33, subd. 1(2).

6. Based upon the facts set forth in the Notice of Hearing, the Applicant is incompetent to practice marriage and family therapy, in violation of Minn. Stat. § 148B.37, subd. 1(1).

7. Based upon the facts set forth in the Notice of Hearing, the Applicant violated the Code of Ethics adopted by the Board (which is set forth in Minn. R. 5300.0350). Specifically, the Applicant engaged in unprofessional and unethical conduct, in violation of Minn. R. 5300.0350, subp. 3; exploited the trust and dependency of a client and engaged in an inappropriate dual relationship with a client, in violation of Minn. R. 5300.0350, subp. 5.B.; engaged in sexual contact or other physical intimacies with a client, in violation of Minn. R. 5300.0350, subp. 5.E.; exploited the professional relationship with a client for her emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 5300.0350, subp. 5.G.; and failed to terminate a professional relationship when her objectivity or effectiveness was impaired, in violation of Minn. R. 5300.0350, subp. 5.J.


8. The imposition of appropriate disciplinary action against the Applicant is in the public interest.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Board take appropriate disciplinary action against the Applicant.

Dated: February 8, 2012



BARBARA L. NEILSON
Administrative Law Judge

Reported: No hearing occurred.

NOTICE

This report is a recommendation, not a final decision. The Board of Marriage and Family Therapy will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Board shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. The parties should contact Jennifer Mohlenhoff, Executive Director of the Board, 2829 University Avenue S.E., Suite 330, Minneapolis, MN 55414, (612) 617-2220, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

AFFIDAVIT OF SERVICE

Re: In the Matter of Tonya Gilmore, Applicant

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

TAMMIE L. REEVES, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on June 18, 2012, s/he caused to be served the FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER (WITH EXHIBIT A ATTACHED), by personally delivering and/or depositing the same in the United States mail at said city and state, true and correct copy(ies) thereof, properly enveloped with prepaid first-class postage, and addressed to:

By U.S. mail:

Lee R. Johnson
Johnson & Greenberg, P.L.L.P.
300 South Highway 169, Suite 140
St. Louis Park, MN 55426

The Honorable Barbara L. Neilson
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

Hand-Delivered:

Benjamin R. Garbe
Assistant Attorney General
Office of the Attorney General
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

Tammie L. Reeves

TAMMIE L. REEVES

Subscribed and sworn to before me on
June 18, 2012.

Marianne L. Ellis
NOTARY PUBLIC

AG: #3031739-v1

